

1 Otis recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto of which official notice is taken.

9 II

10 During 1979 it came to Puget Sound Air Pollution Control Agency's
11 (PSAPCA) attention that appellant, Graystone Corporation, proposed to
12 construct a new cement plant in Kent. This plant would constitute a
13 new air contaminant source. Accordingly, in September, 1979, PSAPCA
14 advised Graystone to file a "Notice of Construction and Application
15 for Approval" as provided by PSAPCA Section 6.03 of Regulation I.
16 Graystone filed that notice with PSAPCA on October 15, 1979.

17 III

18 PSAPCA made no response to Graystone's notice for more than a year
19 after it was filed. The engineering official of PSAPCA responsible
20 for review of the notice was no longer with the agency by the time of
21 this hearing. No evidence was submitted by PSAPCA to explain what
22 review, if any, Graystone's notice received during the period of more
23 than a year following its filing in October, 1979. Neither was there
24 evidence that Graystone inquired after the progress of its notice.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

IV

In December, 1980, a PSAPCA inspector on routine patrol discovered Graystone's newly constructed, operating cement plant (a new air contaminant source) which was described in Graystone's 1979 notice not yet acted upon by PSAPCA.

Accordingly, PSAPCA issued a Notice of Violation to Graystone for constructing a new air contaminant source without the PSAPCA approval required by Section 6.03(a) of PSAPCA's Regulation I. This was dated December 15, 1980.

On December 22, 1980, PSAPCA wrote to Graystone notifying it, for the first time, that its 1979 notice under Section 6.03(a) was incomplete. Forms were included to allow completion. No sanction was imposed upon Graystone at that time.

V

Graystone's Vice President received the additional forms sent by PSAPCA and at first glance assured PSAPCA that these would be filed by February 1, 1981. Upon closer examination of the forms, however, it appeared to him that the information called for was both multitudinous without end and, possibly, would require disclosure of trade secrets. He discarded the forms during a moment of righteous indignation which--rightly or wrongly--visits all humans from time to time.

VI

When the forms were not received from Graystone, PSAPCA issued, on February 26, 1981, a Notice and Order of Civil Penalty assessing a

FINAL FINDINGS OF FACT,
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1 \$250 civil penalty against Graystone for violation of the notice and
2 approval provisions of Section 6.03(a) of PSAPCA's Regulation I. From
3 this, Graystone appeals.

4 VII

5 Any Conclusion of Law which should be deemed a Finding of Fact is
6 hereby adopted as such.

7 From these Findings the Board comes to these

8 CONCLUSIONS OF LAW

9 I

10 Section 6.03(a) of PSAPCA's Regulation I provides, in pertinent
11 part:

12 (a) No person shall construct, install or establish
13 a new air contaminant source,...[exceptions not shown
14 here]...unless a 'Notice of Construction and
15 Application for Approval' on forms prepared and
furnished by the Agency, has been filed and approved
by the Agency in accordance with Sections 6.07(a) or
6.11. (Emphasis added.)

16 "Person" includes a private corporation such as appellant, Graystone.
17 Section 1.07(ff) of PSAPCA Regulation I. By constructing a new air
18 contaminant source without prior approval by PSAPCA as required,
19 Graystone violated Section 6.03(a) of PSAPCA Regulation I.

20 II

21 Graystone's failure to obtain PSAPCA's Section 6.03(a) approval is
22 a serious matter. The information sought by the PSAPCA forms must be
23 sufficient to allow PSAPCA to determine that the proposed source will,
24 inter alia, be designed and installed to operate without causing
25 violation of emission standards and that the equipment incorporates

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 "best known available and reasonable methods of emission control".
2 Section 6.07 cited in Section 6.03(a), above. Consequently Graystone
3 has assumed considerable risk by constructing and placing its
4 equipment in operation before PSAPCA's Section 6.03(a) approval.
5 Likewise Graystone violated the law, as we have here concluded.

6 While PSAPCA's response to Graystone's 1979 notice filing was not
7 exemplary, nevertheless PSAPCA has shown patient and constructive
8 restraint by choosing the subject \$250 civil penalty as its sanction
9 for this violation. This civil penalty is fully justified and will be
10 sustained. We note, however, that this resolution of the matter
11 should leave the doors of both parties open to further cooperative
12 communication to the end that Section 6.03(a) approval will be issued
13 if merited. Lastly, as to the possibility that trade secrets may be
14 disclosed, the parties should first be exact in identifying the
15 information truly needed. Thereafter PSAPCA's Section 3.07 provides
16 for the protection of confidential information when it is truly
17 necessary to disclose it. Disagreement over disclosure of information
18 may occasion review and determination by this Board or a court. Such
19 disagreement can never serve as license to proceed without PSAPCA's
20 Section 6.03(a) approval.

21 III

22 Any Finding of Fact which should be deemed a Conclusion of Law is
23 hereby adopted as such.

24 From these Conclusions the Board enters this
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

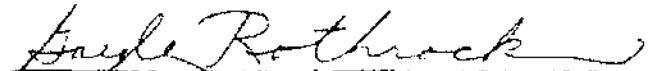
ORDER


The \$250 civil penalty (No. 5005) assessed by PSAPCA against Graystone Corporation is affirmed.

DONE at Lacey, Washington, this 3rd day of December, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


GAYLE ROTHROCK, Member


WILLIAM A. HARRISON
Administrative Law Judge

FINAL FINDINGS OF FACT,
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